



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2008-0633; FRL-9929-06-Region 6]

Approval and Promulgation of Implementation Plans; Arkansas; Interstate

Transport State Implementation Plan to Address Pollution Affecting Visibility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a revision to the Arkansas State Implementation Plan (SIP) submitted by the State of Arkansas on September 16, 2009, for the purpose of addressing the requirements of the Clean Air Act (CAA) regarding interference with other states' programs for visibility protection for the 2006 revised 24-hour fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). The EPA is proposing that the Federal Implementation Plan (FIP) we proposed on April 8, 2015, to address certain regional haze and visibility transport requirements for the State of Arkansas also remedies the deficiency created by our proposed disapproval of Arkansas' SIP submittal to address the requirement regarding interference with other states' programs for visibility protection for the 2006 PM_{2.5} NAAQS.

DATES: Comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2008-0633, by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- E-mail: *medina.dayana@epa.gov*
- Mail: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- Mail or delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket No. EPA-R06-OAR-2008-0633. Our policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* website is an “anonymous access” system, which means we will not know

your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to us without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment due to technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina, 214-665-7241; medina.dayana@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Medina or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

A. Interstate Transport and the 2006 PM_{2.5} NAAQS

In 2006, we revised the 24-hour PM_{2.5} NAAQS to 35 µg/m³ (October 17, 2006, 71 FR 6114). SIPs addressing the interstate transport requirements of section 110(a)(2)(D)(i) of the CAA are due to us within three years after the promulgation of a new or revised NAAQS (or within such shorter period as we may prescribe).¹ Section 110(a)(2)(D)(i) of the CAA identifies four distinct elements, sometimes referred to as prongs, related to the evaluation of impacts of interstate transport of air pollutants with respect to a new or revised NAAQS. In this action for the State of Arkansas, we are addressing the second element of section 110(a)(2)(D)(i)(II) with respect to the 2006 24-hour PM_{2.5} NAAQS. The second element of section 110(a)(2)(D)(i)(II) of the CAA (hereafter referred to as Prong 4) requires that states have a SIP, or submit a SIP revision, containing provisions prohibiting emissions from within a state from interfering with measures required to be included in the implementation plan for any other state under the provisions of Part C of the CAA protecting visibility. Because of the impacts on visibility from the interstate transport of pollutants, we interpret this “good neighbor” provision in section 110 of the CAA as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. This is consistent with the requirements in the regional haze program which explicitly require each state to address its share of the emission reductions needed to meet the reasonable progress goals for surrounding Class I areas.²

¹ CAA Section 110(a)(1).

² 64 FR 35714, 35735 (July 1, 1999).

B. Arkansas' Interstate Visibility Transport Submittal for the 2006 PM_{2.5} NAAQS

On September 16, 2009, Arkansas submitted a SIP revision intended to address the requirements of Prong 4 with respect to visibility transport for the 2006 PM_{2.5} NAAQS. This submittal also addressed other “infrastructure” elements specified in CAA section 110(a)(2), necessary to implement, maintain, and enforce the 2006 PM_{2.5} NAAQS. We previously acted on the portions of the September 16, 2009 submittal that addressed these other infrastructure elements specified in CAA Section 110(a)(2).³ Arkansas' September 16, 2009 SIP submittal that addresses transport for the 2006 PM_{2.5} NAAQS may be accessed through the *www.regulations.gov* website (Docket No. EPA-R06-OAR-2008-0633). Arkansas indicated in the submittal that it meets the required protection of visibility provisions of CAA section 110(a)(2)(D)(i)(II) for the 2006 PM_{2.5} NAAQS.

II. EPA's Evaluation

A. EPA's Approach for Evaluating Interstate Visibility Transport

In three memos released in 2006, 2009, and 2013, we provided guidance to the states regarding their obligations with respect to Prong 4. In the 2006 memo, we informed states that they could satisfy prong 4 for the 1997 8-hour ozone and PM_{2.5} NAAQS by making a simple SIP submission confirming that it was not possible at the time to assess whether there was any interference with measures in the SIPs of other states designed to protect visibility until the states' regional haze SIPs were submitted and approved.⁴ In the 2009 memo, we recommended

³ 77 FR 50033 (August 20, 2012) and 78 FR 53269 (August 29, 2013).

⁴ Office of Air Quality Planning & Standards, U.S. Env'tl. Protection Agency, Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards, at 9-10 (Aug. 15, 2006).

that a state could meet prong 4 requirements through its Regional Haze SIP.⁵ EPA's rationale supporting this recommendation was that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis. The common understanding was that, as a result of this collaborative environment, each state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations under the regional haze rule. This interpretation is consistent with the requirement in the regional haze rule that a state participating in a regional planning process must include "all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process." See 40 CFR 51.308(d)(3)(ii). Most recently, in the 2013 memo, we suggest ways prong 4 obligations can be satisfied with respect to the 2008 ozone NAAQS, 2010 nitrogen dioxide (NO₂) NAAQS, 2010 sulfur dioxide (SO₂) NAAQS, and 2012 PM_{2.5} NAAQS infrastructure SIPs.⁶ There, we reiterated that states could satisfy prong 4 by confirming that they had fully approved regional haze SIPs.⁷ We reasoned that a fully approved regional haze SIP necessarily would ensure that emissions from a state's sources were not interfering with measures required to be included in other states' SIPs to protect visibility.⁸ Alternatively, we explained that a state could satisfy its prong 4 obligations by including in its infrastructure SIP a demonstration that emissions within its jurisdiction do not interfere with

⁵ Office of Air Quality Planning & Standards, U.S. Env'tl. Protection Agency, Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS), at 5 (Sept. 25, 2009).

⁶ Office of Air Quality Planning & Standards, U.S. Env'tl. Protection Agency, Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 13, 2013).

⁷ *Id.* at 33.

⁸ *Id.*

other states' plans to protect visibility.⁹ We clarified that such a submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions were sufficient to comply with any mutually agreed upon RPGs for downwind Class I areas.¹⁰

B. Evaluation of Arkansas' Submittal

An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (PM_{2.5}) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., SO₂, nitrogen oxides (NO_x), and in some cases, ammonia (NH₃) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter that impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. PM_{2.5} can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In the September 16, 2009 infrastructure SIP submittal for the 2006 PM_{2.5} NAAQS, Arkansas indicated that it meets the required protection of visibility provisions of section 110(a)(2)(D)(i) of the CAA but did not explain how it meets this requirement. We are proposing to find that Arkansas' SIP does not fully ensure that emissions from sources in Arkansas do not

⁹ *Id.* at 34.

¹⁰ *Id.*

interfere with other states' visibility programs as required under the Prong 4 provision because the SIP does not demonstrate how the requirement is satisfied. Furthermore, we previously found the Arkansas Regional Haze SIP to be deficient and partially disapproved it. In our final rule published on March 12, 2012, we partially approved and partially disapproved the SIP revision submitted by Arkansas in 2008 to address the regional haze requirements (Arkansas Regional Haze SIP).¹¹ This action included a disapproval of a large portion of Arkansas' best available retrofit technology (BART) determinations for its subject to BART sources, as we concluded these BART determinations did not meet the requirements of the CAA and our regional haze regulations. As a result, the corresponding emissions reductions from Arkansas sources that other states had relied upon in their regional haze SIPs would not take place. Therefore, we are proposing to disapprove the portion of Arkansas' September 16, 2009 SIP submittal that addresses the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility transport for the 2006 PM_{2.5} NAAQS.

Under section 110(c) of the Act, whenever we disapprove a mandatory SIP submission in whole or in part, we are required to promulgate a FIP within 2 years unless we approve a SIP revision correcting the deficiencies before promulgating a FIP. Specifically, CAA section 110(c) provides that the Administrator shall promulgate a FIP within 2 years after the Administrator disapproves a state implementation plan submission "unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan." The term "Federal implementation plan" is defined in section 302(y) of the CAA in pertinent part as a plan promulgated by the Administrator to correct an inadequacy in a SIP. Thus, upon finalizing our proposed disapproval of Arkansas' SIP submittal

¹¹ 77 FR 14604.

addressing the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility transport for the 2006 PM_{2.5} NAAQS, we would have an obligation to promulgate a FIP for Arkansas, unless we first approve a SIP revision that corrects the deficiencies in the disapproved SIP submittal.

Our April 8, 2015 proposed FIP corrects the disapproved portions of the Arkansas Regional Haze SIP. The disapproved portions included a majority of the State's BART determinations, the State's reasonable progress analysis and reasonable progress goals, and a portion of the State's long term strategies for its Class I areas.¹² Our proposed FIP addresses BART requirements for nine units at six facilities, proposes a reasonable progress analysis and controls for two units at one power plant under the reasonable progress requirements, and proposes revised reasonable progress goals and long-term strategies for Arkansas' two Class I areas. Our proposed Regional Haze FIP together with the already approved portions of the Arkansas Regional Haze SIP address all regional haze requirements for Arkansas and would ensure that the emissions reductions from Arkansas sources that other states relied upon in their regional haze SIPs are achieved. As such, there would be adequate provisions prohibiting any source or other type of emissions activity within Arkansas from emitting any air pollutant in amounts which would interfere with measures required to be included in the applicable implementation plan for any other state to protect visibility.

III. Proposed Action

We are proposing to disapprove a portion of a SIP submittal that was submitted by Arkansas on September 16, 2009. The portion of the SIP submittal we are proposing to disapprove addresses the CAA provisions for prohibiting air pollutant emissions from interfering

¹² 77 FR 14604

with measures required to protect visibility in any other state for the 2006 24-hour PM_{2.5} NAAQS. We are proposing to find that the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility transport for the 2006 PM_{2.5} NAAQS will be satisfied by the combination of the emission control measures in the Regional Haze FIP we proposed on April 8, 2015, and the already approved portions of the Arkansas Regional Haze SIP. We are proposing to determine that the Regional Haze FIP we proposed for Arkansas on April 8, 2015, will satisfy our FIP obligation for interstate transport of air pollution and visibility protection for the 2006 24-hour PM_{2.5} NAAQS. We will not finalize our proposal that the Regional Haze FIP addresses our FIP obligation unless and until, we finalize our action on the Regional Haze FIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from

all or part of the rule. The fact that the CAA prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector.” EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination with Indian Tribal Governments

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution or Use

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

Dated: June 18, 2015.

Ron Curry,

Regional Administrator, Region 6.

Title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Amend §52.173 by adding paragraphs (c) and (d) to read as follows:

Subpart E—Arkansas

§52.173 Visibility Protection

* * * * *

(c) The portion of the SIP addressing noninterference with measures required to protect visibility in any other state are disapproved for the 2006 24-hour PM_{2.5} NAAQS.

(d) The deficiencies in the portion of the SIP pertaining to adequate provisions to prohibit emissions in Arkansas from interfering with measures required to protect visibility in any other state for the 2006 24-hour PM_{2.5} NAAQS, submitted on September 16, 2009, are remedied by Section 52.173(c).

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